

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Chaim Grosinger et al.,

Plaintiffs,

- against -

Simon Schoenwald,

Defendant.

08 Civ. 4361 (CS) (PED)

**REPORT AND
RECOMMENDATION**

**TO: THE HONORABLE CATHY SEIBEL,
UNITED STATES DISTRICT JUDGE**

On May 8, 2008, a complaint (“Complaint”) was filed in this action. The case was assigned to the Honorable Charles L. Brieant, United States District Judge, and referred to the Honorable Mark E. Fox, United States Magistrate Judge, for all purposes. On August 5, 2008, it was reassigned to Your Honor, and by notice dated January 12, 2009, the referral was reassigned to the undersigned for all purposes.

The Complaint in this matter alleges various torts, including defamation, libel, slander, and tortious interference with business relationships. There is no proof of service of the summons and Complaint on file.

On February 6, 2009, after Plaintiffs failed to appear for a conference, I issued a Rule 4(m) notice and ordered Plaintiffs to submit to the Court, by February 20, 2009, written explanation of any good cause that may exist for failure of service. See Exhibit A, attached hereto. As of today’s date, no proof of service has been filed and no explanation for failure of service has been submitted. Therefore, I respectfully recommend that, in accordance with Rule 4(m), Your Honor should dismiss this action without prejudice. See Fed. R. Civ. P. 4(m).

NOTICE

Pursuant to 28 U.S.C. §636(b)(1), as amended, and FED. R. CIV. P. 72(b), the parties shall have ten (10) days, plus an additional three (3) days, pursuant to FED. R. CIV. P. 6(d), or a total of thirteen (13) working days, see FED. R. CIV. P. 6(a), from the date hereof, to file written objections to this Report and Recommendation. Such objections, if any, shall be filed with the Clerk of the Court with extra copies delivered to the chambers of The Honorable Cathy Seibel at the United States Courthouse, 300 Quarropas Street, White Plains, New York, 10601, and to the chambers of the undersigned at the same address.

Failure to file timely objections to this Report and Recommendation will preclude later appellate review of any order of judgment that will be entered.

Requests for extensions of time to file objections must be made to Judge Seibel.

Dated: February 23, 2009
White Plains, New York

Respectfully Submitted,



Paul E. Davison
United States Magistrate Judge
Southern District of New York

A copy of the foregoing Report and Recommendation has been sent to the following:

Chaim Grosinger
Esther Grosinger
Yoel Grosinger
14 Maple Terrace
Monsey, NY 10952

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Chaim Grosinger et al.,

08 Civ. 4361(CS)(PED)

Plaintiffs,

ORDER

v.

Simon Schoenwald,

Defendant.

-----x

PAUL E. DAVISON, United States Magistrate Judge:

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

The complaint in this action was filed on May 8, 2008, and there is no proof of service of the summons and complaint on file. This Court scheduled a conference in this matter for February 5, 2009, and plaintiffs failed to appear. If plaintiffs have good cause for the failure of service, plaintiffs may submit to the Court written explanation of that good cause by February 20, 2009. If service is not made upon the defendant, and plaintiffs fail to show good cause why such service has not been made by February 20, 2009, the Court will dismiss the action pursuant to the Rule.

The Pro Se Clerk at the United States Courthouse, 500 Pearl Street, New York, NY

10007-1312, telephone number (212) 805-0136, may be of assistance in connection with court procedures but cannot give legal advice.

SO ORDERED.

Dated: February 6, 2009

White Plains, New York



PAUL E. DAVISON
United States Magistrate Judge